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NOFORN

DEPARTMENT FOR EAP/ANP AND L/OES

E.O. 12958: DECL: 09/29/2018

TAGS: [SENV](#) [PREL](#) [PHSA](#) [PBTS](#) [EWWT](#) [KTIA](#) [AS](#)

SUBJECT: TORRES STRAIT: AUSTRALIAN LETTER

REF: STATE 101422

Classified By: Economic Counselor Edgard Kagan. Reasons 1.4 (b/d).

1. (C/NF) Summary: After interagency consultations about changes to the Torres Strait Pilotage regime discussed in Washington in early August (reftel), the Australian Government is willing to move forward and seeks a more formal statement from the United States in order to bring modification to the Cabinet. Department of Foreign Affairs and Trade International Legal Branch Assistant Secretary Adam McCarthy provided a letter to EAP/ANP Director Frelick September 29 laying out Australia's willingness to modify the existing Marine Notice to state that failure to take on a pilot by a vessel longer than 70 meters during a passage through the Torres Strait would be subject to punishment the next time the vessel entered an Australian port. McCarthy said that this modification discussed in Washington has been approved at the senior working level by the appropriate Australian agencies (DFAT, the Attorney General's Department and the Australian Maritime Safety Agency). Before taking the next step, which would be to bring the modification to the Cabinet, the GOA wants to ensure that this modification would address U.S. concerns. Emphasizing Australia's desire to resolve the matter, McCarthy asked for some form of written response that would allay concerns that the United States might not be satisfied with the proposed change. McCarthy also stressed Australian concern that this proposal not be shared with Singapore until finalized, as well as asking that the United States refrain from criticizing the Torres Strait regime in multilateral fora. He said the GOA would like to bring the issue to the Cabinet for action before the middle of December. End Summary.

2. (C/NF) DFAT International Legal Division Assistant Secretary Adam McCarthy told Econcouns September 29 that Australian officials have reached preliminary agreement on changes to the Torres Strait Pilotage regime to address U.S. concerns. These follow very closely the August 6-7 discussions held in Washington. McCarthy praised U.S. willingness to engage productively at those talks. The key point from Canberra's perspective had been to realize that the U.S. view of Port State authority is significantly broader than Australia's. He said this allows room to address U.S. concerns while maintaining what Australia considers to be the key elements of the current regime.

¶3. (C/NF) The next step will be to take the modification to the Cabinet, according to McCarthy. Before doing this, the GOA would like confirmation that the United States is satisfied with the proposal. This confirmation should be in some form of written communication, he said, saying that it will be important to have something to answer questions from the Cabinet. McCarthy stressed that the Australians are still addressing the question of how the change would be addressed under domestic law, but that this is a technical issue that should be relatively easy to resolve once the idea of the change has been approved. He said that the GOA would like to move quickly on the issue, ideally by securing Cabinet approval by mid-December. (Comment: This would be right before Australia's long summer holiday in which the Cabinet usually does not meet until early February. End Comment.)

¶4. (C/NF) McCarthy said that Australia has classified the letter, which is for Australian and U.S. Government eyes only because of the implications of such a document should Singapore press ahead with international legal action. He asked that the United States refrain from criticizing the Torres Strait regime while the matter is under consideration.

¶5. (C/REL Australia)

Begin Text of Letter:
FOR AUSTRALIAN AND UNITED STATES GOVERNMENT EYES ONLY

26 September 2008

Ms. Alcy Frelick
Director
Office for Australia, New Zealand and Pacific Island Affairs
United States Department of State

(By Hand): Dear Alcy:

Thank you again for hosting us during our recent discussions on Australia's system of pilotage in the Torres Strait. From an Australian perspective the discussions were productive -- they involved a frankness, openness and collaboration that did justice to the wider bilateral relationship which our two countries enjoy.

I am sorry it has taken some time to get back to you but, as you will appreciate, the possible changes we discussed in August involve a range of administrative, legal, operational and policy questions which we have had to work our way through at this end. Following detailed inter-agency consideration, we are now in a position to return to you with a proposed way forward.

We have decided that the most prudent course would be to stick as closely as possible to the text which we discussed with the United States in August.

Our proposed way forward would therefore be to alter the current marine notice to the effect that:

Pursuant to International Maritime Organization Resolution MEPC.133(53), if a vessel passes through the Torres Strait and it does not comply with Australia's system of pilotage for merchant ships 70 m in length and over or oil tankers, chemical tankers, and gas carriers, irrespective of size, the Government of Australia will notify, the vessel's Flag State, Owner, Operator and Master that the vessel failed to take a pilot and henceforth cannot enter an Australian port without the risk of the Owner, Operator and/or Master for the vessel being subject to a penalty under Australian law.,

I should emphasize that this proposal has been developed at official's level and is yet to be considered by Ministers. If you indicate that the United States sees this proposal as an acceptable way forward then we will seek Ministerial

approval and, provided Ministers agree, state the process of implementation.

By way of explanation, as you would be aware, the Australian government is comfortable with the current arrangements in the Torres Strait, which are working well in practice and which we are confident are fully consistent with international law. We accept however that the United States does not share that view and given the importance of our bilateral relationship to both countries, have been prepared to work with you to try and reach an accommodation.

In terms of Singapore, we continue to think that the modalities we discussed in August make the most sense. Provided the United States accepts this proposal and Ministers in Australia agree to proceed with it, we would then, separately but in parallel, take the proposal to Singapore. In this regard Ash Roach's offer to "pitch" the package to Singapore once we have reached agreement on it remains much appreciated.
Qremains much appreciated.

Please feel free to contact me either via Edgard Kagan or direct (w 61 2 6261 1188, h 61 2 6295 9834, cell 61 421 589 985).

Warm regards

Adam McCarthy
Assistant Secretary
International Legal Branch

End Text.

McCallum